

Remarks

Claims 21-40 are pending in the subject application. Claim 39 has been deleted as redundant in view of the amendments to claim 21. Claims 29, 36, and 40 have been amended to address issues not related to patentability, and such amendments do not alter the scope of claims 29, 36 and 40. Upon entry of the foregoing amendments, claims 21-38 and 40 will be before the Examiner for consideration.

Applicant notes that typographical errors appearing in the text of the specification have been corrected in the foregoing amendments to the specification. Furthermore, a revised 'Cross Reference' section has been added above, which properly sets forth the related continuity data to receive the benefit of 35 U.S.C. 120.

Claims 21-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 19-22, 25-28, 33-34 and 37 of U.S. Patent No. 5,932,479. Applicants request that this rejection be held in abeyance until such time claims are held to be allowable but for such double patenting rejection. As such time, Applicant will submit a terminal disclaimer if necessary.

Claims 29, 36, and 40 are rejected under 35 USC 112, second paragraph. Applicant believes that the amendments to the claims obviate this rejection. Reconsideration is requested.

Claims 21, 23, 34 and 39-40 are rejected under 35 USC 112, first paragraph as failing to comply with the written description requirement. Applicant asserts that the amendments to the relevant claims above obviate this amendment. Claim 21 has been amended to recite that control sequence comprises a 5' untranslated region from a chloroplast gene and a promoter functional in said chloroplast. It is asserted that the amendment to claim 21 obviates this rejection for it, and the rejection of dependent claims 23, 39 (cancelled) and 40. Furthermore, independent claim 34 was amended to recite that the promoter is one that is functional in a chloroplast. Applicant asserts that such amendment obviates this rejection as it applies to claim 34. In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this 35 USC 112, first paragraph rejection.

Claims 21, 23, 34 and 39-40 are rejected under 35 USC 112, first paragraph as lacking enablement. Applicants incorporate the remarks made above in response to the

written description rejection. Applicant asserts that the amendments to the rejected claims obviate all bases for this rejection. Reconsideration is respectfully requested.

All grounds for rejection or objection having been addressed and overcome herein, it is respectfully urged that this application is in condition for allowance. Should the Examiner be of the opinion that there remain valid grounds on which any of the claims as herein amended may be rejected, it is respectfully requested that the undersigned be accorded the courtesy of a telephonic interview to address and overcome any such remaining grounds for rejection.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Van Dyke", is written over a horizontal line.

Timothy H. Van Dyke, Reg. No. 43,218  
Customer No. 29,847  
Beusse Brownlee Wolter Mora & Maire  
390 N. Orange Avenue, Suite 2500,  
Orlando, Florida 32801;  
Telephone: 407-926-7726; Fax: 407-926-7720.